HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W. P. No. 957/06 (MS)
Mahaveer Prasad Malpani
Vs
Presiding Authority Haldwani N.T.L. and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 25.07.06

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 957 (MS) OF 2006

Mahaveer Prasad Malpani,
Managing Director of Kumaon Resins Private Limited Kakraligate Pithoragarh Road Tanakpur, District Champawat, Uttaranchal at present C/o T.S. Enterprises E-416 Road No. 14 V.K.I. Area Jaipur, Rajasthan. .....Petitioner.

Versus

1. Presiding Officer Industrial Tribunal Uttaranchal Haldwani, Nainital.
2. Hayat Singh, S/o late Shri Har Singh, R/o Chaukidar of Kumaon Resins Private Limited Kakraligate, Pithoragarh Road, Tanakpur, District Champawat, Uttaranchal.

.....Respondents.

Dated: 25.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Vijay Bhatt, Advocate for the petitioner and Standing Counsel for the respondent no.1.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 5th March, 2005 as well as 7th January, 206 passed by the respondent no. 1/Presiding Officer, Industrial Tribunal Uttaranchal Haldwani, District Nainital.

Briefly stated, the petitioner is Managing Director of Kumaon Resins Pvt. Limited. The proceeding under Section 33 (C) (2) of the Industrial Disputes Act, 1997 was initiated by the respondent no. 2.

The grievance of the petitioner is that an exparte award was made on 5th March, 2005 in Misc. Case No. 153/02. the petitioner has filed an application for recalling the said order, but the said application has been rejected. The ground for recalling of the order was that the petitioner could not be informed as will appear from paragraphs 6 and 7 of the application. The same is quoted below:-

"6. यह कि प्रार्थी प्रतिवादी वर्तमान में जयपुर राजस्थान में रह रहा है और उसके लिए बिना सूचना के न्यायालय में उपस्थित हो पाना सम्भव नहीं। प्रार्थी द्वारा वाद कार्यवाही में अनुपस्थिति जानबूझकर नहीं की गई बल्कि जो अनुपस्थिति हुई वह मात्र न्यायालय में सूचना प्राप्त न हो पाने के कारण हुई।

7. यह कि प्रार्थी प्रतिवादी वाद कार्यवाही में अपना पक्ष प्रस्तुत करना चाहता है। पूर्व में अपने व्यक्तिकार्य में उलझे होने के कारण वह न्यायालय श्रीमान में उपस्थित नहीं हो पाया और न ही अपनी ओर से किसी अधिकृत प्रतिनिधि को ही नियुक्त कर सका जिस कारण उसकी ओर से वाद कार्यवाही में अनुपस्थित रही।"

The application has been filed on 5th July, 2005 whereas the award has been made on 5th March, 2005 and a such it is desirable in the interest of justice that the petitioner may be heard before proceeding for the exparte award.

The Apex Court in ***M.S. Grewal Vs. Deep Chand Sood(2001) 8 SCC 151*** has held as under:-

"Law Courts will lose their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

Since the award is to the extent of Rs. 65,000/-, let the petitioner deposit a sum of Rs. 40,000/- and the amount shall remain in deposit before the Tribunal and the same shall be

released immediately after the award. The petitioner shall cooperate with the hearing of the matter.

In view of the aforesaid, petitioner shall be afforded an opportunity of hearing. The orders dated 7th January, 2006 and 5th March, 2005 are quashed. Petitioner shall cooperate with the hearing after depositing a sum of Rs. 40,000/- within a period of one month. However, the Tribunal shall pass the final order under Section 33(C) (2) within a period of three months from the date of presentation of the certified copy of this order. In case the amount is deposited, the recovery proceedings shall remain in abeyance for a period of three months.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

25.07.2006
Rathour